

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1676 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements?- No

2. To be referred to the Reporter or not?- No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? - No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?- No

5. Whether it is to be circulated to the Civil Judge?  
- No

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RATILAL KANABHAI CHAUDHRY

Versus

STATE OF GUJARAT

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Appearance:

MR MM JADEJA for Petitioner

MR BD DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR MC KAPADIA for Respondent No. 2

SERVED for Respondent No. 3, 4

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 20/03/96

ORAL JUDGEMENT

Rule. Learned Government Counsel Mr.B.D. Desai  
and learned Counsel Mr.M.C. Kapadia, for the respondents

nos. 1 and 2 waive the service of the Rule. Respondents nos.3 and 4 are served. There is no appearance on their part.

The dispute, essentially, centres round a Motor vehicle - DCM Toyota. There was a rival claim between the parties. The learned Magistrate had declined to decide upon the case to be led by the petitioner and respondent no.2-Rajubhai Bamaniya, on the ground that, he has no jurisdiction to decide this question. The matter was carried in revision before the Sessions Court, Bulsar at Navsari. The proceedings were registered as Criminal Revision Application No. 56 of 1995. Those proceedings have been decided by the learned Additional Sessions Judge, Bulsar, at Navsari, vide the orders dated November 8, 1995. It has been said that, the vehicle happens to be in the custody of the respondent no.2-Rajubhai Bamaniya and that, subject to certain conditions, the same was continued to be in his custody.

The challenge in the present petition is against the said orders passed by the learned Additional Sessions Judge. The limited contention being raised by Mr. M.M. Jadeja, learned Counsel for the petitioner is that, when the Sessions Court had taken the view that, the learned Magistrate was competent and authorised to decide the question regarding the custody of the vehicle, later on, by the very same orders, he could not have taken up the task to decide this question on his shoulders. According to the learned Counsel, the proper course would have been to remand the matter to the learned Trial Magistrate, who could have conducted a regular inquiry and could have allowed the parties to adduce evidence, both oral and documentary. Learned Counsel Mr.Kapadia, who appears on behalf of the respondent no.2 challenges this proposition. Learned Government Counsel Mr. Desai leaves the matter for my decision.

Upon hearing the learned Counsels, it appears that, when the learned Additional Sessions Judge has come to the conclusion that, the learned Magistrate was competent under the law to decide the question regarding the custody of the vehicle, then the better course open for him was, to remand the matter to the learned Trial Magistrate, with appropriate directions. Saying on one hand that, the learned Magistrate is invested with the jurisdiction and, deciding the very same question on the other hand, by himself by the learned Additional Sessions Judge, does not appear to be in consonance with the settled legal position and the practice. The present petition, therefore, requires to be allowed in part and

the same is hereby partly allowed. The orders under challenge are quashed and set aside and the matter is hereby remanded to the learned Trial Magistrate, with a direction to decide it within a period of three months from the date of receipt of the writ of the present orders, after affording a reasonable opportunity of being heard to the parties and to adduce evidence, both oral and documentary, if they prefer to do so.

From the orders passed by the learned Additional Sessions Judge, it appears that, the respondent no.2 is in the custody of the vehicle in question. The same position should be continued till the learned Trial Magistrate decides the matter afresh, as indicated above. The Rule is made absolute accordingly.

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